

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 08-01275 HRL	DATE FILED 3/5/2008	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF BOOKHAM, INC.		DEFENDANT JDS UNIPHASE CORP, ET AL.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,658,035		SEE ATTACHED COMPLAINT
2 6,654,400		
3 6,687,278		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Betty Walton	DATE March 5, 2008
------------------------------------	--	------------------------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

JURY DEMAND

Plaintiff respectfully requests a jury trial on all issues triable thereby.

Dated: March 4, 2008

COOLEY GODWARD KRONISH LLP

By: Jeffrey S. Karr
Jeffrey S. Karr
Attorneys for Plaintiff
Bookham, Inc.

295654 v3/CO

1 COOLEY GODWARD KRONISH, LLP
2 THOMAS J. FRIEL, JR. (80065)

3 tfriel@cooley.com

4 JEFFREY S. KARR (186372)

5 jkarr@cooley.com

6 3000 El Camino Real

7 Five Palo Alto Square

8 Palo Alto, CA 94306

9 Telephone: (650) 843-5000

10 Facsimile: (650) 857-0663

11 COOLEY GODWARD KRONISH, LLP

12 WAYNE O. STACY (pro hac pending)

13 wstacy@cooley.com

14 380 Interlocken Crescent, Suite 900

15 Broomfield, CO 80021-8023

16 Telephone: (720) 566-4000

17 Facsimile: (720) 566-4099

18 Attorneys for Plaintiff

19 BOOKHAM, INC.

ADR

E-FILE

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
RECEIVED
JAN 11 2011
PM 3:27

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN JOSE DIVISION

23 BOOKHAM, INC., a Delaware
24 corporation,

25 Plaintiff,

26 v.

27 JDS UNIPHASE CORP., a Delaware
28 corporation;
AGILITY COMMUNICATIONS, INC.,
a Delaware corporation, and DOES 1-10,

Defendants.

No.

C08 01275 HRL

**COMPLAINT FOR INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE, STATUTORY
UNFAIR COMPETITION AND
DECLARATORY JUDGMENT OF
NONINFRINGEMENT, INVALIDITY AND
UNENFORCEABILITY**

DEMAND FOR JURY TRIAL

Plaintiff, for its complaint herein, alleges as follows:

THE PARTIES

1. Plaintiff, Bookham, Inc. ("Bookham") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2584 Junction Ave., San Jose, California, 95134.

1 jurisdiction over the subject matter of this action under 28 U.S.C. §1338.

2 **VENUE**

3 8. Venue is proper in this Court under 28 U.S.C. §1391.

4 **INTRADISTRICT ASSIGNMENT**

5 9. This patent action is in an excepted category for Local Rule 3-2(c), Assignment of a
6 Division, and will be assigned on a district-wide basis.

7 **JDSU'S WRONGFUL ALLEGATIONS OF PATENT INFRINGEMENT**

8 10. JDSU purports to own United States Patent Nos. 6,658,035 (the " '035 patent"),
9 6,654,400 (the " '400 patent"), and 6,687,278 (the " '278 patent"), collectively referred to as the
10 "Patents" and attached as Exhibits 1, 2 and 3. Records at the United States Patent and Trademark
11 Office list Agility Communications as the present assignee for the Patents.

12 11. JDSU acquired Agility Communications in November 2005 and, on information
13 and belief, acquired at least some rights in the Patents.

14 12. JDSU asserts that the technology covered by the Patents is proliferating through the
15 optics industry.

16 13. In particular, JDSU asserts that Bookham's tunable laser products, which are used
17 for high-speed data communications, are covered by the '035 patent.

18 14. The '400 patent and the '278 patent are related to the '035 patent and claim related
19 subject matter to the '035 patent.

20 15. JDSU has accused Bookham in writing of infringing the claims of the '035 patent.

21 16. In particular and on information and belief, JDSU has informed Bookham's
22 customers that Bookham's tunable laser products infringe the claims of the '035 patent.

23 17. Additionally, and on information and belief, JDSU has informed Bookham's
24 customers that they will infringe the claims of the '035 patent by purchasing or using Bookham's
25 tunable laser products.

26 18. JDSU, on information and belief, has informed Bookham customers that Bookham
27 tunable lasers may not be available in the future due to the fact that those products infringe the
28 '035 patent.

19. JDSU's assertions of infringement have damaged Bookham.

20. JDSU's threat to Bookham's customers has negatively impacted Bookham's sales interaction with its customers.

21. JDSU, on information and belief, has offered to sell its products to Bookham's customers as a replacement for Bookham's products.

22. Additionally, Bookham has suffered irreparable injury, including increased operational costs, damage to its corporate reputation, and damage to its brand as a result of its conduct.

FIRST CLAIM FOR RELIEF

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

UNDER CALIFORNIA COMMON LAW

23. Bookham incorporates paragraphs 1-22 as though set forth fully and completely

24. On information and belief, JDSU intentionally interfered with prospective business relations between Bookham and its potential customers.

25. On information and belief, JDSU has engaged in unfair, unlawful or fraudulent business practices, and in untrue or misleading advertising through accusing the Bookham tunable products of infringing the claims of the '035 patent.

SECOND CLAIM FOR RELIEF

STATUTORY UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONAL CODE

§ 17200, ET SEQ.

26. Bookham incorporates paragraphs 1-22 as though set forth fully and completely

27. On information and belief, JDSU has engaged in unfair, unlawful or fraudulent business practices, and in untrue or misleading advertising by accusing the Bookham tunable laser of infringing the claims of the '035 patent.

28. On information and belief, JDSU's unlawful conduct has resulted in JDSU's unjust

29. Upon information and belief, JDSU is likely to continue its allegations of patent infringement unless enjoined by this Court.

30. Bookham is entitled to an injunction enjoining JDSU from making any threats of or charging or asserting or instituting any action for infringement of the claims of the Patents against Bookham, or anyone in privity with Bookham, including its suppliers, successors, assigns, agents, customers, and/or potential customers.

31. Bookham has suffered monetary damages resulting from JDSU's unlawful conduct.

THIRD CLAIM FOR RELIEF

DECLARATORY JUDGMENT OF NONINFRINGEMENT OF

U.S. PATENT NOS. 6,658,035, 6,654,400, AND 6,687,278

32. Each of paragraphs 1-22 is incorporated herein by reference.

33. There is an actual and justiciable controversy between Bookham and JDSU as to whether the use, making, sale, or offering for sale of the Bookham tunable laser products infringes the claims of the '035, '400, and '278 patents.

34. On information and belief, JDSU has accused Bookham's tunable laser products of infringing the claims of the '035 patent.

35. The '400 and '278 patents are related to the '035 patent and claim related subject matter to the '035 patent.

36. Bookham currently manufactures the Bookham tunable laser products for sale and use in the United States.

37. Bookham's tunable laser products do not infringe any valid claim of the '035, '400 and '278 patents.

38. JDSU's allegations of patent infringement have caused, and will continue to cause, damage to Bookham.

39. Upon information and belief, JDSU is likely to continue its allegations of patent infringement.

40. Bookham is entitled to a declaratory judgment of noninfringement of the claims of the '035, '400, and '278 patents.

1 **FOURTH CLAIM FOR RELIEF**

2 **DECLARATORY JUDGMENT OF INVALIDITY OF**

3 **U.S. PATENT NOS. 6,658,035, 6,654,400, AND 6,687,278**

4 41. Each of paragraphs 1-22 is incorporated herein by reference.

5 42. There is an actual and justiciable controversy between Bookham and JDSU as to
6 whether each and every claim of the '035, '400, and '278 patents is valid.

7 43. Bookham contends that one or more claims of the '035, '400, and '278 patents is
8 invalid for failure to meet one or more of the conditions of patentability specified in 35 U.S.C.
9 §§101, 102, 103 and/or 112.

10 44. On information and belief, JDSU contends that each claim of the '035, '400, and
11 '278 patents is valid and enforceable.

12 45. The assertions made by JDSU that Bookham is infringing the '035 patent have
13 caused, and will continue to cause, irreparable harm to Bookham.

14 46. Bookham is entitled to a declaratory judgment of invalidity of the claims of the
15 '035, '400, and '278 patents.

16 **FIFTH CLAIM FOR RELIEF**

17 **DECLARATORY JUDGMENT OF UNENFORCEABILITY OF**

18 **U.S. PATENT NOS. 6,658,035, 6,654,400, AND 6,687,278**

19 **AND RELATED PATENTS AND PATENT APPLICATIONS**

20 47. Each of paragraphs 1-22 is incorporated herein by reference.

21 48. There is an actual and justiciable controversy between Bookham and JDSU as to
22 whether the '035, '400, and '278 patents and/or related patents and patent applications are
23 unenforceable in whole or in part due to inequitable conduct before the United States Patent and
24 Trademark Office (the "USPTO") by person(s) involved in the prosecution of the '035, '400, and
25 '278 patents and/or related patents and patent applications.

26 49. Bookham contends that one or more claims of the '035, '400, and '278 patents
27 and/or related patents and patent applications are unenforceable because of failure to comply with
28 the duty of candor to the USPTO during the prosecution of the applications that led to the issuance

1 of the '035, '400, and '278 patents, related applications, and applications upon which priority is
2 claimed.

3 **50.** Upon information and belief, person(s) involved in the prosecution of the '035,
4 '400, and '278 patents and/or related patents and patent applications violated the duty of candor
5 with the intent to deceive the USPTO during the prosecution of the '035, '400, and '278 patents
6 and/or related patents and patent applications.

7 **51.** Under the doctrine of infectious unenforceability, the inequitable conduct
8 committed by person(s) involved in the prosecution of the '035, '400, and '278 patents and/or
9 related patents and patent applications infects and renders unenforceable all related patents and
10 patent applications.

11 **52.** Bookham is entitled to a declaratory judgment of unenforceability of the claims of
12 the '035, '400, and '278 patents and/or related patents and patent applications.

13 **WHEREFORE,** Bookham prays that:

14 **(a)** Agility, JDSU, its officers, agents, servants, employees, attorneys, assignees, and
15 those persons in active concert or participation with them, be enjoined from making any threats of
16 or charging or asserting or instituting any action for infringement of the '035, '400, and '278
17 patents against Bookham, or anyone in privity with Bookham, including its suppliers, successors,
18 assigns, agents, customers, and/or potential customers;

19 **(b)** Bookham recover compensatory damages against Agility and JDSU;

20 **(c)** Bookham recover punitive damages against Agility and JDSU;

21 **(d)** A declaratory judgment be entered that the manufacture, use, and/or sale of the
22 Bookham tunable laser products does not infringe, induce the infringement of, or contribute to the
23 infringement of the '035, '400, and '278 patents;

24 **(e)** A declaratory judgment be entered that each claim of the '035, '400, and '278
25 patents is invalid;

26 **(f)** A declaratory judgment be entered that each claim of the '035, '400, and '278
27 patents and, under the doctrine of infectious unenforceability, each claim of related patents and
28 patent applications is unenforceable;

1 (g) This case be declared an exceptional case under 35 U.S.C. §285, and that Bookham
2 be awarded its attorney's fees in this action; and

3 (h) Bookham be awarded all other and further relief as the Court deems just and proper
4 in this case.

5
6 Dated: March 4, 2006

COOLEY GODWARD KRONISH LLP

7
8 By: Jeffrey S. Karr
9 Jeffrey S. Karr

10 Attorneys for Plaintiff
11 BOOKHAM, INC.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28